

REMARKS/ARGUMENTS

Claims 1-3, 7, 9, 25-26, and 28-33 remain in this application. Claims 4-6, 8, 10-24, and 27 have been previously canceled.

Claims 3, 29 and 32 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 3 has been presently amended to recite the closed language of "consists of", rather than "comprises". Claim 29 has been amended to claim the "frozen food product" of claim 28. Claim 32 has been amended to claim the "baked wafer" of the invention, rather than a "baked good".

Claims 1-3, 7, 9, 25-26, and 28 -33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Conti et al (WO 00/13512) for reasons of record.

The Examiner states that it would have been obvious to one skilled in the art to use corn syrup having a low DE as claimed in the present invention when it is desired to have a low degree of sweetness. Neither Conti et al nor the present invention are directed at obtaining a sugar wafer having a low degree of sweetness.

The present invention is directed to food products having a crisp texture in high moisture environments.

Conti et al is directed at obtaining a sugar wafer that is sufficiently flexible over a longer period of time when compared with standard sugar wafers, to allow further processing while retaining the sugar wafers characteristic desirable crispiness when cooled.

Conti et al does not state that the sugar wafer has or will retain the crispness profile of the present invention in high moisture environments, and in fact states that when the sugar wafer is used in direct contact with a confectionery material preferably

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has a low water activity, e.g. a water activity below 0.5 and preferably below 0.3 see page 5, lines 1-3.

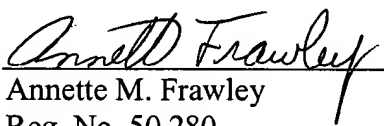
It is impermissible hindsight to assert that the reducing sugars of Conti et al would have the same DE values of the present invention and additionally the same modulus values as claimed. There is no selection direction for corn syrup in Conti et al, in fact the corn syrup in Conti et al. is listed as a reducing sugar and the other sugars listed in Conti et al. are simple common sweeteners often used in substitute for sucrose that would be unsuitable for the present invention. Thus, the reference does not render the claims obvious. The reference does not describe or suggest the elements of the claims.

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance and a Notice to that effect is earnestly solicited. The Examiner is invited to telephone Applicant's attorney at (763) 764-4158 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 07-0900.

Respectfully submitted,

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On: June 9, 2004

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